

An Open Letter to the California Judiciary

Administration of Justice in Domestic Violence Cases

Why send a message to the California judiciary about domestic violence when it is neither a new problem nor one unfamiliar to the court system?

On September 6, 2005, Chief Justice Ronald M. George said farewell to me as the retiring chair of the Judicial Council Rules and Projects Committee and asked me to chair the newly formed Judicial Council Domestic Violence Practice and Procedure Task Force. Charged with making recommendations to the Judicial Council, the task force will submit proposals that help to ensure the fair, expeditious, and accessible administration of justice for litigants in domestic violence cases.¹ In my view, administering domestic violence cases should be the court system's highest priority. I know that it is mine.

I accepted the appointment with enthusiasm. The Chief has a long arm and, apparently, an even longer memory. In 1989, I served as a member of the planning committee for the first judicial education institute on criminal domestic violence, entitled "Domestic Violence: The Crucial Role of the Criminal Court Judge,"² and later served as faculty for a similar program conducted in 1990.³ Nothing in the ensuing 15 years has changed my view that domestic violence cases require not only extraordinary care but also the essential presence of judicial leadership, on the part of both individual jurists and the judiciary collectively.

Regrettably, in 2005, many of the same issues that confronted me in 1989 are still true—the need for judicial leadership, the importance of compliance with statutory and other mandates, the need to develop best practices, and the importance of judicial branch education, to name just a few. I hope that the newly formed task force will not only implement significant gains in improving court practice and procedure but will also institutionalize those gains and develop a mechanism for monitoring, revising, and maintaining best practices. It is my further hope that 15 years from now another task force chair will not be pondering why we have not made more progress in the way we handle these extraordinarily important cases.

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*Court of Appeal, First Appellate District,
Division Four*

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For the same reasons—the request of our Chief Justice and the importance of the subject—I ask each of you to take immediate steps in your courtrooms and in your courts as a whole to ensure that we are truly doing the best we can in these critical cases. I ask each of you to provide the task force with your comments, suggestions, ideas, and energy. And, finally, I ask each of you to indulge me while I summarize some of my own ideas about domestic violence cases—what makes them different, and what we can do together to truly work justice in these cases that tear at the fabric of our families and our communities.

WHAT IS DIFFERENT ABOUT DOMESTIC VIOLENCE CASES?

Domestic violence is the crime that tears families apart.⁴ An act of domestic violence can be alleged in the context of cases filed in virtually every department of the court, from criminal to family to juvenile law. Some of these cases, deemed “cross-over” cases, involve multiple filings in one or more departments involving the same parties or family. In the case of elder victims, domestic violence may be a part of elder abuse or conservatorship proceedings in probate court. Domestic violence may form the basis for a claim of damages in a personal injury action filed in the general civil department. Indeed, the National Center for State Courts reports that during the last 10 years the number of domestic violence cases in state courts increased by 77 percent.⁵ In short, domestic violence affects all of us and in the most pervasive ways.

Behavior defined as domestic violence is a health risk, it affects children, it often constitutes criminal conduct, and it can be lethal. Statistics recently reported by the Office of the California Attorney General⁶ make these observations clear:

- A study by the California Department of Health Services on women’s health issues found that nearly 6 percent of women, or about 622,000 women per year, experienced violence or physical abuse by their intimate partners.
- Women living in households where children were present experienced domestic violence at much higher rates than women living in households without children: each year domestic violence occurred in more than 436,000 households in which children were present, potentially exposing nearly a million children to violence in the home.
- In 2003, 48,854 arrests were made for domestic violence; 80 percent of those arrested were men. Of 194,288 telephone calls made to police for assistance in a domestic violence incident, 106,731 involved a weapon.
- In 2003, almost 25 percent of female homicide victims were killed by their spouses. In contrast, less than 1.5 percent of male victims were killed by their spouses.⁷

Most important, whether the court system is confronted with violent behavior in a criminal or civil context, domestic violence is an act that is perpetrated by one person

against another with whom the perpetrator has a relationship.⁸ The two individuals involved may love each other; they may even have a child together. And since we all are the product of relationships, we have feelings about these cases—feelings about how people should treat each other and about how they should act within a relationship or a family. The prevalence of domestic violence means that, although we may not see it, it is all around us—in our families, in our neighborhoods, in our schools, in our places of work. We are all too aware that these cases can be extremely difficult, particularly when the victim recants or other problems of proof arise. But to the extent that we fail to do everything possible to treat domestic violence cases as a continuing and serious public safety risk both for victims and for their children, we are letting down these victims as well as our society. Children exposed to domestic violence in the home may be irrevocably damaged by that trauma or, on the other hand, may suffer greatly as a result of the absence of a parent, whether the father or the mother, in the aftermath of that abuse. The fact is that domestic violence remains an act that is most frequently perpetrated by a man against a woman—a fact that touches on all our cultural, historical, and emotional notions about the role of gender in our culture. As a result of these complexities, many judges find it infinitely more difficult to adjudicate domestic violence cases than other matters—whatever the legal standard may be—in a neutral and dispassionate way. And this is a task that I, along with each of you, have taken an oath to perform.

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WHAT CAN GO AWRY IN DOMESTIC VIOLENCE CASES?

In December 2003, the Attorney General of California, Bill Lockyer, formed his own task force, in some ways similar to the one I now chair, to look at the local criminal justice response to domestic violence cases. This precursor task force, chaired by Casey Gwinn, former City Attorney of the City of San Diego, examined three issues that relate directly to the courts' work: obtaining and enforcing restraining orders, adjudicating misdemeanor domestic violence cases, and holding batterers accountable.⁹ The Attorney General's task force report contained bad news about the criminal justice system—bad news that none of us wanted to hear. It did not break new ground or suggest radical reform. Rather, the report succinctly stated that in various ways many criminal justice agencies and, indeed, even the courts were not complying with the clear, unambiguous mandates contained in the law. Not surprisingly, the bulk of the report's recommendations urged renewed vigilance in complying with existing statutory and other mandates on the part of all aspects of the criminal justice system, including the courts.¹⁰ Consider the following elementary proposals, to cite just a few examples culled from the Attorney General's task force report:

- Issue a criminal protective order when it is required by law.¹¹
- Do not strike firearms restrictions that are mandated by both state and federal law.¹²
- Order batterers' intervention when it is required by law.¹³

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- Order mandatory terms and conditions required by law, such as a three-year probationary term, a criminal protective order, and an order to attend a 52-week batterers' intervention program.¹⁴
- Enter all restraining orders and protective orders promptly and accurately into the criminal justice databases, as required by law.¹⁵
- Make emergency protective orders readily accessible to victims in appropriate cases, as required by law.¹⁶

Ensuring the fair, expeditious, and accessible administration of justice for litigants in domestic violence cases—the job the Chief Justice would have our task force perform—requires much more than strict adherence to statutory and other mandates. I submit to you that it requires finely tuned systems that provide the necessary information, resources, staff, and time to the individual judicial officers who make the decisions that provide for victim safety, batterer accountability, and due process for all parties. This means that computers must talk to each other. It means that judges must have access to information. And it means that judges must be able to respond effectively to the differing needs of each individual case. The cornerstones of such a system are (1) the appropriate allocation of or increase in resources, including education and technology; (2) communication within the court and feedback from justice system partners and the public; (3) judicial and court leadership; and (4) accountability that includes ongoing assessment and monitoring of court performance.¹⁷

WHAT DO WE NEED TO DO THIS JOB?

The reality of adjudicating issues of domestic violence is daunting. Criminal cases are docketed on immensely busy misdemeanor calendars. Probation officers, as a direct result of dwindling resources (coupled with extraordinary caseloads), may be unable to perform supervision, monitoring, or certification of batterers' intervention programs to the extent necessary. Beleaguered family law judges decide the best interest of children exposed to domestic violence on "order-to-show-cause" calendars that tax even the most expert jurist's stamina.

And the judges who handle these calendars need vital information. They ask themselves a myriad of questions: Has the person before me been the restrained party on a prior occasion? in this court? in another county? Since I am a criminal law judge issuing a criminal protective order that orders a perpetrator to stay away from his or her children, is there perhaps another conflicting order issued by a family law judge out there somewhere? Can I order this person to stay away from his or her children? Was supervised visitation ever ordered? Did this person attend the batterers' intervention program as ordered, and does it seem to have done any good? Does this person have children? Does this person understand English, or is an interpreter available? Has this person had the benefit of legal services? Do I have

culturally competent services available to help this family? The list of questions goes on and on and, regrettably, on.

To help us get this vital information and to help us make a fair, impartial, and responsible judgment in the case, we need adequate time, staff, technology, and services.

Adequate resources will go a long way to assisting judges, but judges also need education. They need continuing, adequate, useful education as well as bench tools to help them do this difficult job. Fortunately, the education is available. The Administrative Office of the Courts (AOC) operates a grant-funded project that provides education on domestic violence, stalking, and sexual assault to California's judicial officers. The project provides statewide, regional, and local live programs; distance learning opportunities; and publications. The education available needs to be expanded, and judges need to use it.¹⁸

HOW CAN WE REACH OUT TO JUSTICE SYSTEM PARTNERS AND TO THE COMMUNITY?

In 1992, in a groundbreaking article, Judge Leonard P. Edwards of the Superior Court of Santa Clara County called for the creation of family violence councils as an effective means to foster a coordinated justice system response to domestic violence and to help decrease the incidence of that violence. In concluding his article, Judge Edwards stated:

In order to deal effectively with the problem of family violence, a comprehensive change in the entire system which detects, investigates, prosecutes, and monitors family violence cases will be necessary. That change can be best accomplished through the workings of a family violence council.¹⁹

Judge Edwards's article followed a national conference and a California conference, both of which focused on creation of a coordinated response throughout the nation and urged each state and ultimately each California county to form family violence councils. A primary and important goal of such councils in California has been to provide a feedback loop between the courts and the other parts of the justice system as well as the public about practice and procedure in domestic violence cases. The beauty of this strategy is that it posed systemic remedies for what were, in fact, systemic problems. As a rule, judges and courts are isolated. They have few mechanisms, outside of an individual case, for discussion about policies, practices, and procedures that affect litigants generally. Family violence councils can provide this essential tool.

Yet now, 13 years later, we are unsure about the status of family violence councils across California. In some counties they remain vibrant and viable, but in others they have disbanded or strayed into activities that have made it ethically questionable for judges to continue to participate.

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Community outreach and feedback are important judicial functions. They are not only ethically permissible; they are encouraged in the California Rules of Court and Standards of Judicial Administration.²⁰ By contrast, judges must be sure that the domestic violence councils do not involve them in impermissible activities. Such activities might include lobbying for substantive changes in the law not strictly related to practice and procedure, using the judicial office to raise funds for domestic violence causes, or speaking with council members about pending cases. To avoid an appearance of impropriety, councils must be inclusive, and all justice system partners must be entitled to and encouraged to participate.

The new Domestic Violence Practice and Procedure Task Force will actively endeavor to foster and renew the development of domestic violence councils or similar mechanisms to promote feedback from community to court in each county. We anticipate sponsoring regional conferences to discuss ways to improve court communication with our justice system partners and to review progress in remedying the problems identified to date.

HOW CAN WE MAKE THE COURT SYSTEM ACCOUNTABLE AND INSTITUTIONALIZE RECOMMENDED CHANGES?

California operates one of the largest and most complex court systems in the world. Its judges are assigned to hear matters involving domestic violence for often a brief period, and then they move on to another assignment. With a preference for generalists, our system necessarily struggles with the task of institutionalizing excellence and creating best practices that work in many different legal cultures and geographic locations. Judges must diligently avail themselves of opportunities for education on the topic of domestic violence and ensure that, as the law changes, they keep abreast of all new requirements. The need for education is critical for judges who hear domestic violence cases regularly, and it is arguably even more compelling for judges who hear them occasionally. Each judge must ensure that community justice partners have an opportunity to provide the court with feedback—not about individual cases, but rather about recommended practices and procedures that foster fairness, efficiency, and access to justice—and, in contrast, to call to the court's attention practices and procedures that operate as barriers. Finally, when other agencies within the justice system fail to carry out their clear responsibilities, it is the duty of the court to require and encourage improvement on the part of those agencies. Judicial leadership in this critical arena must be the catalyst for change.

We need methods to ensure accountability and review performance in order to maintain the quality of justice in our courts. This is most apparent when we look at the problems recently revealed in administering justice in domestic violence cases. Creation of the Judicial Council's domestic violence task force provides us with a vehicle to account for our performance as an institution in these vital cases.

The AOC has also launched a project—the Domestic Violence Safety Partnership project (DVSP)—that provides new tools on a local level. DVSP has distributed checklists to the courts that help them assess and monitor compliance with mandates and recommended safety measures in domestic violence cases. The self-assessment tools relate primarily to restraining orders and protocols for family court services. These tools are available and can be used voluntarily to identify problem areas. The AOC also can provide technical assistance or local training. In one small rural county, the presiding judge adopted an innovative approach. He shared the self-assessment tool with community and justice-system partners and asked them to help the court assess its performance. This project can be expanded to other areas relating to domestic violence. Other ideas about monitoring progress should be developed and implemented as well.

WHAT WILL THE NEW TASK FORCE DO?

At its first organizational meeting, the task force that I chair assigned committees to tackle at least the following projects over the next two years:

- the development of best practices in cases involving domestic violence allegations
- the improved handling of restraining orders to ensure prompt and accurate entry of these orders into relevant statewide electronic databases
- participation in the revision and creation of needed (and more easily understandable) Judicial Council forms relating to domestic violence
- improvement of communication between courts and community and justice-system partners about practice and procedure in domestic violence cases
- expansion of judicial branch education on domestic violence issues

As you can see, we have our work cut out for us. I hope you agree with me that there is an urgent need to address these challenges. I hope you will also agree that with this task force comes an exciting opportunity to make a real difference in the way California's courts respond to domestic violence. Thank you for considering my ideas and suggestions. We need your help.

1. See Appendix A for a roster of members of the Judicial Council Domestic Violence Practice and Procedure Task Force.

2. Ctr. for Judicial Educ. & Research, Judicial Council of Cal., Domestic Violence: The Crucial Role of the Criminal Court Judge (Sept. 15, 1989) (unpublished conference materials on file with the *Journal of the Center for Families, Children & the Courts*).

3. Ctr. for Judicial Educ. & Research, Judicial Council of Cal., Domestic Violence: The Crucial Role of the Criminal Court Judge (Aug. 24, 1990) (unpublished conference materials on file with the *Journal of the Center for Families, Children & the Courts*).

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4. Videotape: Domestic Violence: The Crime That Tears Families Apart (Admin. Office of the Cts., Judicial Council of Cal., 1988) (on file with the *Journal of the Center for Families, Children & the Courts*).
5. Conference of State Court Admin'rs, Position Paper on Safety and Accountability: State Courts and Domestic Violence 3 (Nov. 2004) (on file with the *Journal of the Center for Families, Children & the Courts*).
6. TASK FORCE ON LOCAL CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE, OFFICE OF THE ATTORNEY GEN. OF CAL., KEEPING THE PROMISE: VICTIM SAFETY AND BATTERER ACCOUNTABILITY: REPORT TO THE CALIFORNIA ATTORNEY GENERAL FROM THE TASK FORCE ON LOCAL CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE 11–12 (June 2005) [hereinafter KEEPING THE PROMISE].
7. CRIMINAL JUSTICE STATISTICS CTR., CAL. DEP'T OF JUSTICE, HOMICIDE IN CALIFORNIA (2003), available at <http://ag.ca.gov/cjsc/publications/homicide/hm03/preface.pdf>.
8. See CAL. PENAL CODE § 13700 (West 2005); CAL. FAM. CODE § 6203 (West 2005).
9. The Attorney General's task force also looked at the issue of law enforcement's response to health practitioner reports of domestic violence, but this issue did not generate recommendations relating to the courts.
10. See Appendix B for a summary of the findings and recommendations relating to the courts.
11. See CAL. PENAL CODE § 1203.097; KEEPING THE PROMISE, *supra* note 6, at 24.
12. See CAL. FAM. CODE § 6389(a); CAL. PENAL CODE § 12021(g); 18 U.S.C. § 922(g)(8) (2000 & Supp. 2005); KEEPING THE PROMISE, *supra* note 6, at 35.
13. See CAL. PENAL CODE § 1203.097 (West 2005); KEEPING THE PROMISE, *supra* note 6, at 54.
14. See CAL. PENAL CODE § 1203.097; KEEPING THE PROMISE, *supra* note 6, at 54.
15. See CAL. FAM. CODE § 6380(a), (b); Act of Oct. 7, 2005, ch. 631, 2005 Cal. Stat. {___}, available at www.leginfo.ca.gov/pub/bill/sen/sb_0701-0750/sb_720_bill_20051007_chaptered.pdf; KEEPING THE PROMISE, *supra* note 6, at 21–35.
16. See CAL. FAM. CODE § 6250(a); KEEPING THE PROMISE, *supra* note 6, at 28–29.
17. For a comprehensive discussion of these and other factors, see EMILY SACK, FAMILY VIOLENCE PREVENTION FUND & STATE JUSTICE INST., CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES (May 2002).
18. Judicial branch education is provided by the Administrative Office of the Courts' Violence Against Women Education Project and the Center for Judicial Education and Research. For information, see VIOLENCE AGAINST WOMEN EDUCATION PROJECT, JUDICIAL COUNCIL OF CAL., FACT SHEET (Jan. 2005), available at www.courtinfo.ca.gov/programs/cfcc/programs/description/VAWEP.htm.
19. Leonard P. Edwards, *Reducing Family Violence: The Role of the Family Violence Council*, 43 JUV. & FAM. CT. J. 1–17 (1992).
20. CAL. R. CT. 227.8; CAL. STDS. JUD. ADMIN. §§ 24, 39 (West 2005).

Appendix A

APPENDIX

**DOMESTIC VIOLENCE PRACTICE AND PROCEDURE
TASK FORCE**

HON. LAURENCE DONALD KAY (RET.), CHAIR

Presiding Justice of the Court of Appeal, First Appellate District, Division Four

HON. TANI GORRE CANTIL-SAKAUYE

Associate Justice of the Court of Appeal, Third Appellate District

HON. DEBORAH B. ANDREWS

Judge of the Superior Court of California, County of Los Angeles

HON. JERILYN L. BORACK

Judge of the Superior Court of California, County of Sacramento

HON. JEFFREY S. BOSTWICK

Judge of the Superior Court of California, County of San Diego

HON. SHARON A. CHATMAN

Judge of the Superior Court of California, County of Santa Clara

HON. MARY ANN GRILLI

Judge of the Superior Court of California, County of Santa Clara

MS. TRESSA S. KENTNER

Executive Officer, Superior Court of California, County of San Bernardino

HON. JEAN PFEIFFER LEONARD

Judge of the Superior Court of California, County of Riverside

HON. WILLIAM A. MACLAUGHLIN

Presiding Judge of the Superior Court of California, County of Los Angeles

HON. GEORGE A. MIRAM

Presiding Judge of the Superior Court of California, County of San Mateo

MR. JAMES B. PERRY

Executive Officer, Superior Court of California, County of Yolo

HON. REBECCA S. RILEY

Judge of the Superior Court of California, County of Ventura

MR. ALAN SLATER

Chief Executive Officer, Superior Court of California, County of Orange

HON. DEAN STOUT

Presiding Judge of the Superior Court of California, County of Inyo

APPENDIX Appendix B**TASK FORCE ON LOCAL CRIMINAL JUSTICE
RESPONSE TO DOMESTIC VIOLENCE****Abridged Summary of Minimum Standards and
Recommendations: What Courts Can Do**

Source: Abridged and reprinted, with minor changes, with permission from TASK FORCE ON LOCAL CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE, OFFICE OF THE ATTORNEY GEN. OF CAL., KEEPING THE PROMISE: VICTIM SAFETY AND BATTERER ACCOUNTABILITY: REPORT TO THE CALIFORNIA ATTORNEY GENERAL FROM THE TASK FORCE ON LOCAL CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE 89–92 (June 2005).

Obtaining and Enforcing Restraining Orders

- Criminal courts must impose criminal protective orders and require completion of 52-week batterers' intervention programs when sentencing batterers to probation.
- All criminal protective orders must prohibit firearm possession.
- Task force–sponsored Assembly Bill 1288 (Chu), if enacted, will authorize the courts to prohibit firearm possession without having to order that the batterer and victim have no contact or peaceful contact. Prosecutors should move for firearm prohibitions at arraignment in all domestic violence cases.
- Criminal courts must ensure that criminal protective orders are entered into the Domestic Violence Restraining Order System within one business day.
- Family courts must ensure that domestic violence restraining orders are entered into the Domestic Violence Restraining Order System within one day if task force–sponsored Senate Bill 720 (Kuehl) is enacted.
- Courts should maximize the availability of emergency protective orders.
- Family courts and law enforcement should stop requiring domestic violence victims to carry restraining orders to the agency that will enter the orders into the Domestic Violence Restraining Order System.
- Family courts and law enforcement should stop requiring domestic violence victims to carry restraining orders to all law enforcement agencies that may have to enforce the order.
- The many problem practices identified by the task force can be mitigated or eliminated only through the close collaboration of multiple agencies. The leaders of the local agencies must convene on a regular basis to identify and address these problems.

Prosecuting Domestic Violence Misdemeanors

- Misdemeanor courts should not take guilty pleas and sentence defendants charged with domestic violence unless a prosecutor is present.
- Courts should not accept plea agreements that allow batterers to avoid what is mandatory: 52-week batterers' intervention programs and three-year probationary terms.

Holding Batterers Accountable

- Courts and probation departments in each county should develop procedures for measuring and evaluating batterers' program enrollment rates, completion rates, recidivism rates, reasons for noncompletion, and judicial responses to noncompliance.
- Courts, probation departments, and prosecutors in each county should adopt a strategy that puts batterers on personal notice of the specific consequences of absences from programs and that follows up any unexcused absence with immediate arrest and sanctions.
- The Administrative Office of the Courts should develop a form that would be used in every criminal court to record the benchmarks of a batterer's performance on probation while in a batterers' intervention program: progress, non-compliance, terminations, sanctions, and completions.
- The Administrative Office of the Courts should incorporate, within its new statewide Criminal Case Management System, fields that capture all pertinent data on batterers on probation.

Enhancing System's Capacity

- Criminal justice agencies cannot collaborate effectively without judicial leadership. Courts are obligated to exercise such leadership and can do so without violating ethical requirements.
- Domestic violence courts should be studied and expanded, as they hold great promise for addressing the many and complex problems of domestic violence.

APPENDIX

